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Supreme Court, U.S.
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In The
Supreme Court of the United States

IN RE: Steve Weil, *Pro-se,*

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

VERIFIED MOTION FOR HABEAS CORPUS
AND
BRIEF IN SUPPORT OF MOTION

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QUESTIONS PRESENTED

I. Did violation of 28 U.S.C. §§458, 460(b) by AUSA King, daughter of Judge King, practicing law together in the same courthouse simultaneously with her father, prosecuting this case before his fellow judges, divest the district court of its jurisdiction to hear this case, entitling Weil to vacatur of conviction and habeas corpus relief?

II. Was the indictment so seriously flawed that the case should have been dismissed and combined with Question I, similarly deprived court of jurisdiction to try it, habeas corpus warranted?

III. Were Petitioner's counsel ineffective in not raising either violation of Judicial Anti-Nepotism Acts and defective indictment and if so is Weil entitled to habeas corpus relief for ineffective assistance of counsel?

IV. In the totality of the circumstances, facts, events and prejudice Weil was subjected to, should habeas corpus issue immediately?

LIST OF ALL PARTIES

All parties to this proceeding appear on the cover page.

1. STEVE WEIL, Pro-Se

   Defendant/Appellant/Petitioner

2. UNITED STATES OF AMERICA

   Plaintiff/Appellee/Respondent

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VERIFIED MOTION FOR LEAVE TO FILE HABEAS CORPUS

Pro-se Petitioner Steve Weil, brings this Motion for Leave to file for Habeas Corpus directly to this Court in its original jurisdiction, pursuant to sections in JURISDICTION STATEMENT. Weil believes and therefore avers that the facts and circumstances in this case are so strong in his favor, that action by invoking the Court's Original Jurisdiction powers are compelling as the one and only method of achieving justice in a case where a clear manifest injustice is prevalent, all possible avenues below absolutely foreclosed to Weil. The violations of the Constitution and laws of the United States are of such clarity as to simplify the entire decision making process for the court, the determining issue one of legal, fundamental character while simple, is untested, never having been challenged before in any case directly on point that Weil was able to find.

AUSA chief prosecutor here, daughter of Judge Lawrence King, practices simultaneously with her father in the same Miami Federal Courthouse, prohibited by 28 U.S.C.A. §458, 460(b), 5 U.S.C.A. §3110, 18 U.S.C.A. §1910 and other Judicial Anti Nepotism acts, statutes and laws. AUSA is illegally prosecuting cases before her father's fellow jurists, friends, associate and colleagues, which practice is patently unconstitutional, illegal and contrary to laws of the United States, particularly since Judge King also sits by designation on court of appeals, undue influence, bias and partiality toward the Kings ever present. Weil's Brief in Support of this motion, STATEMENT of the CASE opening paragraph, complies with Supreme Court Rule 20.4, details "the reasons for not making application to the District Court of the district in which the applicant is held." It addresses and supports the clear reasons why it is repetitious and an exercise in futility to even attempt to do so, causing further unnecessary, irreparable harm to Weil, setting out with particularity why relief sought is not

available to him, the doors to justice shuttered, other avenues of relief precluded and foreclosed.

This case exceeds the exceptional circumstances requirement, reaches "extraordinary" level permitting exercise of this court's discretionary powers, the court will concur on review, that no adequate relief was able to be obtained from any other court in any form, as the full record and briefs disclose, the subject matter of vital importance to the entire criminal justice system. 11th Circuit has openly shirked its responsibility to decide issue on the merits, refusing to comment or to hear same en banc. See Brief.

Weil is not seeking review of his whole case here, unable to find even one case directly on point, the matter basically untested, believes this court will find in his favor, unambiguous, clear language of the statute requiring a simple, fundamental interpretation as to violation, in which event habeas corpus should issue. Obvious errors of ineffective assistance of counsel in not raising issues presented here, including defective indictment, are self evident, may not even have to be reached here if this court finds lower courts were divested of jurisdiction, as Weil believes it will and thus be accorded summary reversal. No jurisdiction means conviction must be vacated and Weil is entitled to habeas corpus relief. The issue is that simple, that clear.

The "task of Federal Court of Appeals is to decide all properly presented cases coming before it. "Wisniewski v. U.S. 353 US 901 (1957). As the Brief reveals, here it passed the buck, refusing to do so or call a poll refusing hearing en banc, did not even touch on the subject matter. Its total refusal to decide the same cannot realistically be considered meaningless. It is a substantial Federal question of such enormous proportions, that only this court can adjudicate, which would provide Weil with the relief sought here, courts below ambivalent to violations of nepotism standards and its problems as it affects theory of impartial justice when it relates to friends, family, relatives of fellow judges.

Berger v U.S., 255 US 22 (1921). If 11th Circuit did not feel it could decide the issue, it could have certified to the Supreme Court "any question of law... as to which instructions are desired, " which means, among other things, the possibility of an ultimate adjudication, which it obviously did not desire so it chose instead to leave Weil pro-se in a vacuum, believing as a non lawyer, the possibility of his appeal to this court being remote at best, regardless of the inequity and prejudice to Weil. En Banc Denial (App. 2), full Opinion of 11th Circuit provided in Appendix A.

This case is important enough, equitable in nature, seriousness and dignity of claim has never been disputed anywhere in the record – just ignored. Weil is being unjustly penalized, unnecessarily, fundamental fairness compromised, for events not of his making, in clear violation of Constitution and laws of United States as addressed in annexed Brief in Support of this motion. Habeas corpus should be granted.

VERIFIED and Respectfully submitted,

Steve Weil, PRO-SE

Steve Weil, Pro-se

BRIEF IN SUPPORT OF HABEAS CORPUS

OPINIONS BELOW

As for the denial of Petitioner's Hearing En Banc and 11th Circuit Court of Appeals Affirmation of Petitioner's direct appeal, neither Opinion is published, but both are provided and can be found as included in Appendix 2 and 3.

JURISDICTION OF SUPREME COURT

The United States Court of Appeals for the 11th Circuit has rendered an OPINION contrary to and in conflict with other circuits and with decisions of United States Supreme Court. It has substantially departed from accepted and usual course of proceedings in a case of substantial Federal Question, refusing to hear, comment or decide on a matter concerning one of its own judge's children. In so doing, it has caused Petitioner to remain incarcerated unnecessarily, contrary to the clear unambiguous statute violated 28 U.S.C. §458, which mandates habeas corpus relief unattainable below, thereby calling for exercise of Supreme Court original jurisdiction, this case rising to extraordinary circumstances, exceeding exceptional circumstance requirement.

Judgment OPINION Affirmation of the United States Court of Appeals for the 11th Circuit and the Sept. 26, 2002 Denial of Petition for Hearing En Banc, Writ for Certiorari denied, awaiting outcome of Petition for Rehearing filed February 19, 2002. Given the anticipated delay time until that review and the Court's ability to provide full relief in the event it decides the actions of the 11th Circuit on its merits, during such pendancy the danger of more irreparable harm further impairing Weil's fragile health already on the decline, is actual and very real. Petitioner therefore invokes the original jurisdiction of this Court under the "Great Writ" of the Constitution, ART. III of the Constitution, and Supreme Court Rules 17.1, 17.3, 20.2, 20.4

and Title 28 U.S.C. §1651(a) in the event this Court determines the error to be of such fundamental error to warrant issuance of Writ of Error Coram Nobis or other appropriate relief under the All Writs Act.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C. §§458, 460(b), 455(a)

§458 Relative of justice or judge ineligible to appointment

Title 5 U.S.C.A. §3110, §706(1) and (2)

Title 28 U.S.C.A. §144

Title 18 U.S.C.A. §1910

5th Amend. Const. "No person shall be deprived of life liberty... without due process of law."

STATEMENT OF THE CASE

Petitioner, Steve Weil, was convicted after jury trial of 18 U.S.C.A. §1956(a)(3)(B) and §1956(h), sentenced to a term of 83 months commencing Nov. 6, 2000 and is presently incarcerated in Federal Prison Camp (FPC) Miami. Weil's chief case prosecutor AUSA Jena King, daughter of former chief judge in Miami Federal District Court, now active senior judge status in the James Lawrence King Federal Courthouse. Father and daughter team practicing together at the same time in the same courthouse is an illegal combination, exercising undue influence and power over independence, impartiality of judicial process, both in district court and on 11th Circuit Court of Appeals, where Judge King sits by designation. Neither court, in deference to Judge King will issue an adverse opinion here as against him or his AUSA daughter in an usurpation of judicial power, therefore application to this court. (App. 1, 2)

28 U.S.C. §458, 460(b) strictly prohibits the above practice under which Weil was tried and convicted, not knowing the

extent to which the odds were stacked against him, neither his trial counsel or appellate counsel raising any of the issues addressed here, including defective indictment. As a result of the above clear, unambiguous language of the statute, violation of which caused Weil's conviction, Petitioner is now unlawfully subjected to physical restraint, unlawfully confined, being denied his constitutional rights and due process at trial. Failure of either counsel to object or raise same also constitutes ineffective assistance of counsel.

Weil challenges the legality of his imprisonment and believes he is entitled to immediate release pursuant to "Great Writ" Const., this being an exceptional case, with unusual and exceptional circumstances, §458 being untested and 11th Cir. abdicating its authority to do so, refusing to even comment or address the issue, with not even one judge willing to call for a poll in Petition For Hearing En Banc (App. 2), affirming the district court's partial, biased and flawed opinion (App. 3). See pending Petition Rehearing.

It is impossible for Weil to obtain any relief from any other court for redressing the uncontested, clear violations of the Constitution and laws of the United States, this case of such prima facie character as to be an exception to the rule of procedure since other sources of judicial power are already proven not to be available to Weil, the King's sphere of power and propensity to influence reaching into the 11th Cir. itself, refusing to opine on clear, simple narrow issue.

The King family in Miami are both politically and judicially entrenched, Judge King actively overseeing, supervising and controlling cases in the Federal District Courthouse, AUSA Jena King as chief case prosecutor in this case, Judge Larry King Jr. Circuit Court in Miami. AUSA King prosecuting cases in her father's courthouse, before her father's fellow judges, colleagues, friends and associates, none of whom will partake in a decision in this case adverse to anyone in the "family." Nor will the 11th Circuit Court of Appeals, where Judge King sits by designation and knows all the justices personally as does his daughter, render an

opinion here contrary to the interests of Judge King's child, AUSA King, as evidenced in the seriously flawed opinion and absolute refusal of 11th Circuit to address violations of §458 by AUSA King, addressed in Petition For Writ of Certiorari, Record No. 02-992. Both district court and 11th Circuit's turning a blind eye to AUSA King injustices, is reflective of their leanings and sentiments in refusing to even comment on clear violations of: 28 U.S.C. § 458; the unrefuted ineffective assistance of Weil's counsel; the complete bypassing of Weil counsel altogether by AUSA and her office. Strickland v. Washington, 466 U.S. 668; ALR 5th 713. Instead 11th Circuit in furtherance of its "protectionism policy" towards a family member of one of its own, opines to three new Exclusionary Rules: a) "no right to counsel," b) "no fundamental fairness requirement," c) no right to service of process in post-conviction motion, a controversial, unconstitutional opinion casting away decades of traditional 5th, 6th, 8th, and 14th Amendment decisions by the Supreme Court.

In sidestepping and avoidance of having to adjudicate §458, 460(b), the 11th Circuit has abdicated its authority, rather than have to potentially rule against a King family member. It would rather and in fact has rendered its outrageous Exclusionary holdings, showing the lengths it will go to and the extent of Judge King's undue influence and power for absolute familial interests protection. With this background the court should see the futility of Weil having to file for habeas corpus in either district or appellate court, the outcome a surety irrespective of the compelling reasons for granting the writ, denial on the horizon below absolutely guaranteed.

Even as Weil grids himself against the above premise, a §2255 denial is equally assured, as all of the aforementioned reasons are equally applicable. In Miami practice at district court is that the original judge does not even see the §2255 until after Magistrate Sorrentino, to whom pro-se §2255 motions are automatically assigned by the clerk of the court,

first reads and issues a report recommendation, the Magistrate being so overloaded with them it can take one or more years to issue. Then the judge can take another 6 months to a year, Weil still in prison.

This court has been entrusted as the last word on the matter of whether Weil should remain illegally imprisoned by reason of violation of the Constitution and the laws of United States. At 67 years old, with only one kidney and immune complex disease, with a life span expectancy of only 70 years, with degenerative joint disease – degenerative osteo arthritis developed in prison due to inadequate medical treatment and other chronic conditions, every day he remains illegally confined is very precious to him. The BOP has systematically refused him the two therapies he had taken for over 12 years that allowed him to maintain a regimen that stabilized his condition, as not BOP approved, even though Weil offered to pay personally for such treatment, available locally in Miami. (App. 5, 6, 7) This has accelerated his declining health, BOP also refusing to supply or to allow Weil to purchase the prescribed items he consistently took pursuant to his personal physician's prescription to do so. (App. 5, 7) The result is the deterioration of his very fragile health, his illegal 83 month sentence is, tantamount to a death sentence imposed, which hastens every day Weil remains incarcerated.

The violation of §458(a)(1) and (b)(1)(A) and (b)(1)(B) is an error of such fundamental character that if Weil was no longer in custody, it would qualify for Writ of Error Coram Nobis. To add to the §458 violation is the seriously flawed indictment, which neither counsel raised at pre-trial, trial or appeal, having been constructively amended by AUSA pre-trial and containing other structural defects, rendering the indictment nugatory. (App. 4) Weil, a non-lawyer believes that the errors contained herein are of such simple nature, that to make him wait until a §2255 is heard, would be to penalize him further unnecessarily, for the errors which he

was subjected to and prejudiced by contrary to law and the Constitution.

AUSA King has taken affirmative action to hinder justice for Weil and frustrate the implementation and proper administration of justice, by way of practicing law illegally as agent for the government contrary to §458 has engaged in wrongdoing and prosecutorial misconduct of such magnitude as to warrant issuance of writ of habeas corpus immediately by this court. AUSA here is no ordinary prosecutor, but rather an extension of her father, after whom the Federal Courthouse is named. Title 28 U.S.C.A. §458, et seq. 1999, 460(b), 455(a). The undue influence and propensity to influence are an actual reality, for which the above JUDICIAL ANTI-NEPOTISM ACTS were designed to prevent the unlevel playing field Weil has been subjected to, effectively denying him free, unfettered access to courts, to an independent court, and to court impartiality.

This application for writ of habeas corpus standing alone without Weil's filed Petition For Rehearing of Certiorari, presents compelling argument for granting habeas corpus now, but when read together provide overwhelming evidence of the prejudice Weil has suffered at the hands of AUSA King, the presumption of prejudice and of vindictiveness to which Weil is entitled to have weighed in his favor. By invoking habeas corpus, this court should enforce the strict provisions of §458, the thereby invalidating all proceedings below, divesting trial court jurisdiction to have tried the matter at all. The indictment was invalid, the trial was invalid as was Weil's sentence imposed and his continued incarceration illegal. It is a unique, extreme, extraordinary set of circumstances which is keeping Weil in prison illegally.

REASONS FOR GRANTING WRIT OF HABEAS CORPUS

The defective, hand altered indictment (App. 4), the case AUSA related to Judge of Court, and clearly ineffective

counsel, warrant habeas corpus relief. The language of 28 U.S.C.A. §458, 460(b) is clear, simple and unambiguous in Congressional intent states:

> "No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court." 28 U.S. C. §458(a)(1); §458(b)(1)(A) and (b)(1)(B)

AUSA King was both appointed to her position by the then U.S. Attorney who, along with his other AUSA's appeared regularly before her father, Judge King, would not decline hiring the then chief judge's daughter and risk adverse rulings for his office if he did. Once appointed she then became employed by government, performing illegal "legal" duties for them in the same courthouse in which her father reigns, as the single most powerful and politically connected judge not only in Miami, but in the entire Southern District of Florida. Therefore AUSA King violated all three tenets being "appointed and employed" and performing her "duties" in the same courthouse where her father sits on the bench. 28 U.S.C.A. §458(a)(1) and (b)(l)(A), divests the Court's jurisdiction, a clear conflict of interest.

Her presence contaminated every aspect of this case, from the investigative stage where she actively participated and did personally intervene with the FBI to get Weil terminated, convinced FBI not to tell him so he would continue working on the very case in which she indicted him, putting Weil at risk not knowing of her action. She is responsible for a variance, having the indictment hand altered, by writing in a "0" over the amount actually contained in the indictment. (App. 4)

AUSA also structurally changed the language of the section charged in Counts 1, 2, 3 by inserting the word "knowingly" into 18 U.S.C.A. §1956(a)(3)(B) when the language of this section is specifically devoid of the word

"knowingly", which alteration constitutes constructive amendment of the indictment, rendering it void.

It is clear that even a legally appointed and employed AUSA may not act as a policeman or investigator, but must prosecute a legitimate case brought to the U.S. Attorney Office by the investigative arm of government. This AUSA had and still has serious conflicts of interest in her appointment, employment and the duties which she performs in the same federal courthouse in which her father presides over cases which the government presents and tries before him. Such is the case at bar, the government unilaterally "waived" enforcement of §458, 460(b), 455(a); 5 U.S.C. §3110 and 18 U.S.C.A. §1910, deriving benefits of favorable rulings in untold number of criminal matters due to the presence of AUSA King being on U.S. Attorney payroll. It is an illegal waiver.

Judge King, AUSA King, the Chief U.S. Attorney all knew of §458, but chose to ignore it by "waiver", their deliberate failure to support and enforce the clear, simple, unambiguous language of Congressional intent in its passage of this section, by the very people and branches of our government delegated the responsibility to uphold it is unforgivable and irresponsible. The same is true of Weil's ineffective trial and appellate counsel for their failure to raise it pre-trial, at trial and preserve it on the record for appeal, both intimidated by AUSA King and her father Judge King, refusing to take any action that "might" upset her, afraid of having to then pay the price for it next time either one appeared before Judge King, by adverse rulings during the course of their regular legal practices, negatively impacting both their practices and reputations.

Weil is impotent as he could find NO counsel in the legal community who was willing to go up against AUSA King or Judge King, fearing they would incur the wrath of both Judge King's fellow jurists and the other AUSA's who were friends and colleagues of his daughter, out of necessity was then forced to represent himself pro-se. The King's have

a lock on justice in Miami and Weil was one of AUSA King's illegal victims. Weil had a right to be indicted and prosecuted by an AUSA who was conflict of interest free, one without all this powerful outside, undue influence, causing the trial court to "bend over backwards" to accommodate AUSA King, the trial court itself being friend, colleague, associate of Judge King and member of the same exclusive, judicial fraternity. They dispense justice for friends, fellow judges and their kin differently, Weil is entitled to writ of habeas corpus, justice absent here.

Weil is in his third year of imprisonment, being held illegally and unconstitutionally, a manifest injustice to which there appears no immediate cure absent granting of habeas by this court in the face of egregious deviation from prevailing procedural norms, even the 11th Circuit motivated to avoid making any kind of ruling they see as potentially adverse to Judge King and his daughter, §§ 458, 460(b) violations having direct bearing on both family members. The case falls within the category of cases characterized as "Fundamental Miscarriages of Justice." Here the considerations for issuance of habeas corpus is in regard to pure legal questions. Only this court has the ability to right a grevious wrong of the continued holding Weil in custody in violation of the Constitution and laws of the United States, Weil having been deprived of a full and fair opportunity to litigate his rights, AUSA King compromised the integrity of the courts, which occurred at trial and continued thereafter, violates 4th, 5th, 6th, 8th, 10th, and 14th Amend. Const.

The King family has judicially ferried Weil through undue influence and clear violation of law, has imposed restraints on his ability to achieve any semblance of justice, has separated him from his rights under the fundamental law of the land. Weil having exhausted those illusionary remedies available to others not opposed by the King family, dispensed by the very same courts in which he sits, paying homage to Judge King and his AUSA daughter.

Since the 28 U.S.C.A. §458, 460(b) issue is fully briefed in the Petition for Writ of Certiorari, in order to avoid duplicity, Weil incorporates it here as if recited in its entirety as an integral part of this Petition for Habeas Corpus. It is addressed as QUESTION 1, in Petition For Writ of Certiorari, commencing on page 12. Also applicable is QUESTION 3 page 17 in Petition, as it relates to 11th Circuit holding of "no right to counsel" in post conviction motion and failure of Weil's counsel to ever raise violations of §458, 460(b) either in pre-trial, at trial, or post-trial motions, just as they failed to observe and raise serious defects in a flawed indictment, divests jurisdiction. Rather than rehash the entire ineffective assistance of counsel issue, in the interest of scarce judicial time, Weil also incorporates that argument in its entirety here, counsel being the instrument of the cause and prejudice and failing to effectually argue Weil's actual innocence. No where in the record does government or any court deny this ineffectiveness being so apparent. The King influence played on counsel's incompetence, taking further advantage in her illegal AUSA role. This case should inspire an overhaul of the Miami Federal judicial system, as only this court can effectively do.

ARGUMENT

For all practical purposes the unequal treatment of Weil at the hands of AUSA King, is not a reassuring premise and buttresses Weil's well founded fears of having to step back into the den of legal inequity unless this court grants his Petition. Weil knows he has a better chance of winning the lottery and does not aspire to returning to either of King's courts, be it federal district court or 11th Circuit, where both the "appearance of impropriety" and the actual reality of judicial partiality seriously compromises the integrity of the entire system. The lack of judicial independence promulgated by Congress in passage of 28 U.S.C.A. §458, 460(b) is usurpation of judicial process and denial of fundamental fairness and due process. It has devastated the

legal landscape in Miami in a banality of legal evil by manipulating and perverting the fair course of justice in violation of clear law, JUDICIAL ANTI NEPOTISM ACT. The obvious, glaring indifference by each of the above courts and by the Kings' themselves, totally ignoring or gridlocking Weil's pleadings underpins and supports this court's review.

It is completely unfeasible that of all the vast judicial–legal knowledge, astute expertise in both courts, that not one judge was willing to take any action in this abusive case of clear violations of the Constitution and of United States law, depriving Weil of any miniscule amount of due process. The fact remains that since they in unison refused to do so prior, it is highly unlikely that they would favorably entertain Weil's habeas corpus petition now, particularly since he is the one who has brought the abuse to Supreme Court's attention. This court must take notice that when looked at as part of a wider picture, that Weil's claims be given additional credence in the greater scheme for lack of due process and deprivation of Constitutional rights. To Weil this is the court of last resort, any other court below a foregone conclusion and blind alley for him.

QUESTIONS PRESENTED

1. DISTRICT AND APPELLATE COURT LACK OF JURISDICTION

The district court lacked the proper jurisdiction to hear and try this case due to the violations of 28 U.S.C.A. §458, 460(b), 5 U.S.C. §3110, 18 U.S.C.A. §1910 by the presence of AUSA King as the chief prosecutor in this case, thus depriving 11th Circuit of "appellate standing." It was contrary to clearly established law, which constitutes an abuse of both procedural and substantive due process and the clearly erroneous standard. The defective indictment and ineffective counsel only served to exacerbate the prejudice Weil was and still is subjected to, in a clear violation of his

constitutional rights and to lack of any fundamental fairness then and later on appeal, as the record reflects.

An essential and unchanging part of constitutional requirement and thus constitutional standing is threshold issue in every case before a federal court, determining power of court to entertain suit and is jurisdictional requisite at every stage of the proceedings. U.S.C.A. Const. Art. 3, § 1 et. seq. Interests prompting judicial recognition of clearly established law such as we have here, is well grounded in tradition that when Congress has spoken with a clear voice, that is it. U.S. v. McVeigh, 106 F.2d 325 (10th Cir. 1997). In this regard we should be mindful that §458 has been in existence since 1877, providing congressional and public check on corrupt practices, particularly nepotism, to which there is a public aversion. This law was passed to ensure the absolute fairness and impartiality in the legal system, thus enhancing fundamental fairness and avoidance of partiality in the process. In this case law was abused, resulting in a grave manifest injustice and multiple perils toward Weil, he now being considered a "whistle blower" by both the Kings and by those in district and appellate courts. The refusal of King friendly courts to act upon violations that are so clear and of a scale unprecedented in legal annals is indicative of the breadth and width of the Kings' power, the government itself a co–conspirator in committing the employment, then promoting AUSA King and refusing to terminate the violative practice even after it was brought to its attention by Weil. App. 8 - AUSA's reassignment to this case.

All of the above are evidence of substantial proof of specific facts material to this motion. The clear, unambiguous language of §458 has been carefully circumscribed by Congress out of a desire to safeguard defendants from the special hazards inherent in nepotism based cases such as this one, where in deference to Judge King, preference is given to AUSA King, among other things, such as the "2nd bite at the apple" given to her

gratuitously by the district court on its own volition to cure her defective one page response to Weil's motion. See Writ for Certiorari, QUESTION 2, page 15, Case No. 02-992. The statute §458 was intended to make situations such as we have here impossible to occur. The Kings' own defiance in refusing to terminate the complained of conduct is itself enlightening (App. 8), as in Miami they are considered to be untouchable, and justifiably so, Weil's ineffective counsel tip-toed around AUSA King as if he were on eggshells, refusing to raise any subject that might upset her.

The historic policy disfavoring judicial nepotism and laws strictly prohibiting same, divested the district and appellate courts jurisdiction. There is also the absence of any authority to give the government power to "waive" the statute, as it did in "appointing and employing" AUSA King and continuing such employment even in the face of this "whistle blowing" revelation. This is a wholesale departure from the traditional way we would expect government to conduct the affairs of our country and therefore must be held as a presumption against the Respondent, in order to come to grips with the government's consistent failure to abide by the law and to practice what it preaches, for which there are no judicially recognized exceptions. Weil contends illegal "waiver" in that its failure and refusal to halt such acts constitutes prosecutorial misconduct.

Article III imposes three fundamental requirements for standing in federal court, Weil invokes same having qualified for all three: 1) having suffered an injury in fact—an invasion of a federally protected interest which is actual; 2) more than a casual connection exists between the injury and the conduct complained of; 3) the injury is traceable to the challenged conduct. Finally the injury will be redressed by favorable decision of granting habeas corpus. It is well established that legally protected interests derive from various sources, including but not limited to constitutional guarantees. Committee to Save the Rio Hondo v. Lucero, 102 F.3d 445, 447 (10th Cir 1996); McVeigh, *supra* at 334.

Here none of the standards of fairness were observed. The district and appellate courts were devoid of necessary jurisdiction, this court has duty to see that the relevant statute was followed, consistent with congressional intent, government has to date annulled this intent, its waiver frustrated the policy underlying the statute.

Weil has satisfied exceptional circumstances provision of Supreme Court Rule 20.4 to now justify issuance of writ of habeas corpus. Felker v. Turpin, 518 U.S. 651 (1996). Section 2255 expressly provides that a federal prisoner may seek habeas relief if it "appears that the remedy by motion is inadequate or ineffective to test the legality of the detention." U.S. v. Lorentsen, 106 F.3d 279 (9th Cir. 1997); U.S. v. Hayman, 342 U.S. 205, 223 (1952). Felker, *Id.* held that the AEDPA Act did not preclude the Supreme Court from entertaining a habeas corpus petition filed as an original matter in the Supreme Court in a unanimous decision. This is Weil's first Habeas Petition and has made it directly to this court instead of below for all aforementioned reasons. For all practical purposes all other avenues below are foreclosed to him and would cause Weil to remain illegally incarcerated for a prolonged period of time until his demise. In this case the circumstances and sentence here are analogous to a capital case, plain unconstitutional error exists, AUSA in depriving Weil benefit of impartiality, Weil counsel failing to raise issue or object.

Because the institutional integrity of the federal courts require scrupulous protection of public confidence in the judicial process, the standards by which federal judges must gauge their own impartiality are especially strict. The record and circumstances here are at the other end of the spectrum, the Kings' having caused the courts to compromise that integrity. The personal ingredient of Judge King ever silently present, though impermissible, the Kings' also violating 5 U.S.C. §3110, 18 U.S.C. §1910, 28 U.S.C. §454, 455, 632, 955. The violation of §3110(a)(2), (a)(3), 3110(b) and (c). Judge King advocating his daughter's appointment,

employment prohibited, her cases and the district court judges trying them under his supervision, direction, guidance and control at all times relevant in this matter. Miracle v. Estelle, Berger v. U.S., Bell v. Wolfish, *supra.*

2. DEFECTIVE INDICTMENT, STRUCTURAL ERROR, CONSTRUCTIVE AMENDMENT, VARIANCE.

Flawed indictment language mixes two separate sections of 18 U.S.C. §1956, failing to accurately track the specific language of the money laundering statute required for indictment validity. The court at the urging of AUSA also erred in sentencing Weil for the total amount $425,000 of all six counts, when he was only charged with counts 1, 2, 3 or $115, 000 at best ambiguous (App. 4), addressed below, the threshold guideline is $350,000. Holding Weil responsible for counts not realleged in 4, 5, 6, for which he was not charged or convicted constitutes variance, structural error and constructive amendment to a seriously flawed and hand altered indictment to which counsel never objected or raised issue, adopting erroneous cross-over language from a different section of the statute not charged, fatal flaw. AUSA inserted language "did knowingly" from another uncharged section of §1956. Comparing statute 18 U.S.C. §1956(a)(3)(B) against specific indictment language, the statute says:

> (a)(3) Whoever with the intent –
>
> > (B) to conceal, disguise the nature, location, source, ownership, or control of property believed to be proceeds of specified unlawful conduct

In counts 1, 2, 3, AUSA added the words "did knowingly" and also "knowingly" alone in its charge, when the evidence at trial clearly showed there was no specific knowledge, nor jury charge regarding it. Putting this aside, the more serious error appears in Counts 2 and 3 which AUSA combined, even though each count is mandated to be

charged separately, hand altering the amounts charged, adds: COUNTS 2, 3, the dates of each transaction and the approximate amounts charged to each transaction in the indictment. Next to Count 3, the typed, printed sum is $11, 500 and in an illegal attempt to alter the indictment, directly above the $500 figure, someone modified the indictment by hand, writing in an extra "0" on top of the typed amount. (App. 4, p. 2.) This obvious attempt to alter the indictment and change it from the Grand Jury version constitutes constructive amendment, rendering the indictment invalid, as does combining Counts 2 and 3 into one, not "individualized" counts as required by law and procedure. This is also "structural error" which this court considers to be "so intrinsically harmful as to require automatic reversal." Arizona v. Fulminante 499 U.S. 309 (1991); Neder v. U.S., 527 U.S. 1, 7 (1999). At trial the "knowingly" added element was never brought up or proved and the hand alteration, inserting "0" never questioned, objected to or raised by Weil's ineffective counsel. Yet combined the constructive amendment and structural flaw together renders indictment nugatory, the 5th Amendment's Grand Jury guarantee had been violated by the variances of adding a "0" and "knowingly" to the indictment, divests court jurisdiction.

Where an element of the offense is not fully and clearly and fully set out in the indictment, the difference between the offense charged and offense proved is a fatal variance, court permitted broadening of the defective indictment absent any jury instruction or anything to mitigate same, AUSA never proving "knowingly" at trial, but altering statute to provide for it. Thus conviction and jury generalized verdict was permitted on behavior different from that of statute and improperly alleged in the indictment. The court never instructed the jury that the additional language "did knowingly" and "knowingly" contained in the indictment was surplusage. Howard v. Doggett, 526 F.2d 1388 (9th Cir 1975); U.S. v. Leichtman, 948

F.2d 370 (7th Cir 1991). Here insertion of the words changed the nature of the charge, as did the hand alteration of "0" did the amount. In this construction the addition of the word knowingly modified the indictment, in which no trier of fact could have found the essential elements of a crime beyond a reasonable doubt. Jackson v. Virginia, 433 U.S. 307, 319 (1979). The defense in this case was *mens rae* and "knowingly" added to the section charged negates and alters the charged section, contrary to Due Process Clause, 5th Amend. Const. The flawed indictment and violations of §458 as applied to Weil's particular situation, violates both substantive and procedural due process. U.S. v. Salerno, 481 U.S. 739 (1987), Weil liberty interest fundamental right. Reno v. Flores, 507 U.S. 292, 302 (1993).

An indictment is by law a very precise document, the one here altered, modified in words and amounts in an attempt to alter language of section not charged, the amounts incorrect. At the end of the charges, count columns, dates and amounts- underneath them all (App. 4 at, pg. 3, 4), says: "All in violation of Title 18 United States Code, Sections 1956(a)(3)(B) and 2."

Examination of the statute reveals there is no §1956(a)(B)2, the entire section is devoid of any 2 without parenthesis around it. This ambiguous, imprecise addition to counts 2–3, makes for yet another defective flaw argument, the grand jury itself could not intelligently ascertain any degree of comprehension of it and could certainly not charge on it in this form. Further, the signature page does not bear the proper signature of AUSA King in the appropriate line so designated and reserved solely for her to execute, which requires her personal signature. Nor is the indictment dated as required, as is requirement each count be separately, individually distinctly, specifically cited pursuant to language of the statute section charged.

As it now stands Counts 2–3 only charges $11,500 as it appears in the indictment, if the comma in the wrong place, the attempted but botched hand alteration nullifies both

entire combined counts and contaminates the balance of the indictment. AUSA may not reap fruits of a poisonous tree, Wong Sun, *supra*, having caused a defective flaw in the indictment that cannot and may not be cured. The "for" signature of someone other than Mary V. King, above her typewritten space so provided, cannot be tolerated. Noteworthy, it is not and was not at the time of indictment her proper, legal, married name, just as it was not on all other pleadings she signed while employed illegally by government. AUSA continues to use the King name to get maximum judicial leverage before the courts, there being substantial case law prohibiting aliases or previously used names, a/k/a's on indictment and pleading, signatures, requirement of only proper legal name permitted. This is just one more flaw of many escaping ineffective counsel.

Even if there was no comma at all, the typed amount would still be read to be $11500.00 as the cited amount charged, seriously affecting Weil's sentence, as his total amount would be just $65, 000 to which he could be held accountable, arguendo if there were no other flaws. It is replete, the combination of all the infirmities is most compelling, particularly the hand altering insertion of "0" written on top of the printed amount, may constitute obstruction of justice, criminal intent, violation of Weil's Civil Rights and calls for admonishment and sanctions pursuant to Rule 11. The only part of the statute charged says "Whoever, with the intent—" never "knowingly."

The knowledge of an astute, sophisticated, experienced Judge's AUSA daughter violating so many things here and getting away with it is only because of who she is and is only the tip of the iceberg compared to what the court and Weil's ineffective counsel allowed her to do at trial, is a manifest miscarriage of justice, prosecutorial misconduct, deserving of habeas relief. The hand alteration after indictment was returned, as an afterthought, is obstruction, particularly when pursuant to 28 U.S.C.A. §§454, 455(a), 458, 460(b), 632, 955 and 5 U.S.C.A. §3110 and 18 U.S.C. §1910

AUSA King was not even permitted to bring an indictment, depriving court jurisdiction to, hear the case, no less a structurally erred constructive amended, seriously flawed indictment. It has incorrect: language, information, amounts, signatures, sections cited and all other flaws combined make for a very defective, ambiguous indictment. It is completely unacceptable, invalid, should be vacated and dismissed in its entirety, with habeas corpus granted to Weil. Stirone v. U.S., 360 U.S. 212 (1960).

The conduct for which Weil was convicted did not "come within the statutory definition of the crime" and his conviction constituted "legal error." Griffin v. U.S. 502 U.S. 46, 49 (1991). With AUSA King as prosecutor, a flawed, illegal indictment and illegal prosecutor, with ineffective counsel affects viability of a conspiracy conviction, the constructive amendment adds weight to Weil's cause. U.S. v. Choy, 309 F.3d 602 (9th Cir 2002) [1, 2, 4, 5] held even under plain error review, if constructive amendment prejudiced Weil, conviction must be reversed. 5th Amend. Const. [5]. It is constitutional error, theory on which Weil was illegally convicted constituted variance from the statutory offense, wrongly alleged in the indictment, AUSA version of indictment involves facts and language distinctly different from those set forth in statute section named. AUSA's illegal presence, misconduct in so doing violated clearly established, clear unambiguous law. There are sufficient facts here to determine this matter on a narrow, purely legal issue, the danger to Weil in delay is evident. In light of the total facts here, there exists clear evidence, more than ã reasonable likelihood that the matter was not and would not be handled with impartiality below, which Weil had a right to expect and interests of justice demand. U.S. v. Ritter, 540 F.2d 459 (1976); 28 U.S.C.A. §144; 28 U.S.C.A. §455 n.121, 130, 381, 385, 386.

Bias in favor of AUSA resulted in reverse bias as against Weil and his counsel. Thus if a district and appellate court is biased in favor of one of its own judge's daughters, court

impartiality can reasonably be questioned in relationship to this pro-se party, which it was in this case. It was improper to bring the case and improper, illegal for lower courts to hear it, the bias is clearly evident in arbitrary, capricious denial of Rule 35(b) as Writ For Certiorari reveals. The bias combined with defective indictment caused a prejudice Weil still cannot overcome, court jurisdiction lacking.

3. INEFFECTIVE ASSISTANCE OF COUNSEL

Trial counsel was clearly ineffective pre-trial, at trial and post trial, never dissecting the indictment to discover the flaws Weil himself recently unveiled, never questioning, objecting or even raised issue of nepotism violations and conflict of interest and jurisdiction lacking due to §458 and flawed indictment violations. Weil trial counsel had substantial conflicts of interest in causing all Rule 35(b) events to transpire, being more fearful of his own future practice by not alienating the Kings and assuring his future legal practice, than in Weil's liberty and legal rights.

Appellate counsel was ineffective for all of the above same reasons, for failing to advance all possible reasons showing why trial counsel was ineffective, since they were former law partners, still good friends and colleagues. Nor did he raise other issues relating to trial, such as clear AUSA witness tampering, removal of FBI #302 esculpatory memorandum from FBI files after AUSA King had access to them, plus a host of other errors never refuted by government. Appeal counsel refused to raise subject of ineffective assistance at all and refused to file Rule 35(b) so as not to fault either AUSA or his former law partner. Kimmelman v. Morrison, 477 U.S. 365 (1986); Murray v. Carrier, 477 U.S. 478 (1986), both counsel's representations of Weil so deficient as to constitute absence of effective assistance of counsel and effective access to the courts by refusal to request AUSA recusal. Murray v Giarratano, 492 U.S. 1 (1989), cited in 52 L.Ed.2d 1049 ANNOTATION.

Appellate court protective of its own colleagues and their families, constructed a system of discretionary denial, suffering from the same systematic deficiencies identified in district court, but going further in controversial holding of "no right to counsel" in Rule 35(b) post conviction motion, as not one which requires "fundamental fairness" or "necessitates the assistance of a trained advocate." Petition For Writ of Certiorari, p. 19, App. 3-8. For a learned appellate court to deny fundamental fairness, which should be present in every criminal matter, dismissing the importance of 6th Amend. right to Weil's personally, privately retained counsel, shows extent the court went to protect AUSA King, Judge Marcus authored the opinion, a long standing personal friend of the King family. This effectively denied Weil access to both the appeals court and to his own personal counsel, irrespective of now discovered counsel incompetence, the above cite from 11th Circuit Opinion of Affirmation of AUSA completely "bypassing" Weil counsel in the Rule 35(b) matter and dealing directly with Weil on all issues relating thereto, even though he was represented by two trial counsel and one appeals counsel, (all known to AUSA) in retaliation for counsel not following AUSA personal legal etiquette, counsel afraid to object.

11th Circuit in its unprecedented no right to counsel holding denied Weil right of access to the courts and to counsel, 11th Circuit loathe to reach out, exercise its authority and to decide the adequacy of the evidence, facts, clear violations of §458, instead protecting the Kings shunned its authority, in an unjust resolution of the case, leaving only habeas relief. Reaching a decision on ineffective assistance of counsel requires no fact finding outside of this habeas corpus motion in absence of 11th Circuit's unavoidable duty to rule on §458, 460(b) when clear facts, evidence and language of the law verify allegations of AUSA misconduct, conflicts of interest, bias, violations of Constitution and laws of the United States which it avoided. It is clear Weil was deprived of both effective counsel and

access to his entitlement of the neutrality of impartial, disinterested and independent court, devoid of any personal knowledge of either AUSA King or Judge King and their respective family ties. The same is true of Weil's ineffective counsel being completely intimidated by the Kings and foregoing adequate representation of Weil rather than alienate them or their colleagues.

11th Circuit's "no right to counsel" policy unjustifiably obstructs the availability of any professional representation or other aspects of the right of access to the courts, the legitimate interests of Weil discarded. It is undeniable that Weil counsel was incompetent and the 11th Circuit had an obligation to so find, constructive denial of Weil's right of access to an impartial court is the constitutional right of due process, as is effective counsel. Procunier v. Martinez, 416 U.S. 396 (1974); Bounds v. Smith, 430 U.S. 817 (1977). All of the above resulted in denial of both court access and to effective counsel, this Original Writ for Habeas Corpus to enable Weil unlawfully incarcerated to obtain his freedom. Johnson v. Avery, 393 U.S. 483 (1969). Constitutional right of guarantees of Due Process and Equal Protection clauses violated. 5th, 6th, and 14th Amend. Const.

AUSA in bypassing Weil's counsel interfered with his right to counsel and subsequent access to the courts, Weil having no choice but to represent himself pro-se, incompetent counsel just as happy that he was not "bothered" by AUSA to participate in process, even though he was retained to represent Weil right through all post conviction motions and sentencing. Counsel never withdrawing of record that Weil is aware of, but completely abandoning him to fend for himself as a non-lawyer. 4th, 5th, 6th, 8th, 14th Amend. Const.

Having made a substantial showing of denial of constitutional rights, including right to vindicate such constitutional right to counsel, no matter how ineffective he may be, Bondy v. Scott, 43 Fed. Appx. 168 (10th Cir 2002), 11th Circuit failure to consider claims resulted in a

fundamental miscarriage of justice, which only this court can cure. It is noteworthy that both AUSA and 11th Circuit never denied, anywhere in the record, that Weil counsel was anything but ineffective. It must be accepted as a given. Finally, it should be noted that this case is completely contrary to other 11th Circuit recent holdings, applicable here. IN RE Paschen, A.E. Stanley Mfg. Co. v. Secty. of Labor, Bryan v. U.S., U.S. v Wilson, U.S. v. Steele, *supra.* U.S.C.A. Const. Art. 3 §2, guarantees courts consider matters presented in an adversarial context, Doctrine of "willful blindness" applies to both the courts, AUSA, and to Weil counsel, all intents being willful, of own volition.

Weil notified both trial and appellate counsel of AUSA instructing BOP to invade Weil's confidential, substantial assistance documents and compilations, which he alleges was a "taking" without just compensation by not filing Rule 35(b). Neither counsel took any action to assist Weil in the filing of his Rule 35(b) motion. See Petition for Writ of Certiorari, pg. 3 to 8. U.S. v. Kelley, 790 F.2d 130 (D.C. Cir 1986). Counsel's failure to file Rule 35(c) motion to correct illegal sentence, just one more ineffective example. U.S. v. Golden, 854 F.2d 31 (3rd Cir 1988). Having established ineffective counsel unequivocably, the court now looks to the prejudiced prong of Strickland, but if Weil has shown that he actually or constructively was denied assistance of competent counsel, the prejudice prong of Strickland is not even required to be shown and the conviction must be set aside. Woodward v. Collins, 898 F.2d 1027 (5th Cir 1990).

Such is the case here, mandating vacatur, in which case this habeas petition should be immediately granted. Weil was constructively denied his right to counsel both at trial and on appeal, then prejudice is assumed. Lofton v. Whitely, 905 F.2d 885 (5th Cir. 1990). Between AUSA willful bypassing of counsel, counsel's own incompetence in failing to raise the issues presented here is tantamount to a complete denial of counsel, at trial and on appeal. Penson v

Ohio, 488 U.S. 75 (1988). Ineffectiveness having been established, the conviction must be vacated, habeas issued.

4. DELIBERATE INDIFFERENCE IS CRUEL AND UNUSUAL PUNISHMENT

As another factor, in addition to court divested jurisdiction, thus Weil being actually innocent but has been subjected to cruel and unusual punishment by way of BOP depriving him of both his vital therapies and of all the supplements he had taken since 1988 to prevent recurrence of kidney stones, each one taking a tremendous toll on his one remaining kidney (App. 5, 6, 7). Combine this with the Murray v Carrier, *supra* holding of this court, instructing that "where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default." Smith v. Murray, 477 U.S. 527, 537 (1986).

The failure and refusal of the BOP to permit Weil to continue his proven regimen of both therapy and nutritional supplements to combat his immune complex disease because none of these particular items are BOP "approved", even though Weil has offered to pay for them all personally, at no cost to BOP, is deliberate indifference (App. 4) Denial of these basic items caused Weil to have 10 kidney stones in the two and a half years he has been in prison, each time very traumatic to his one remaining kidney, the loss of which will mean dialysis, which the BOP says they will provide if he needs it -- but are unwilling to provide the therapy he requires to avoid it. Currently, BOP has informed Weil he has kidney stones and gall stones, both very painful, particularly at 67 years old and in a weakened medical condition. After being free of kidney stones since 1988, one must come to the conclusion that their reappearance and reformation is solely due to the deprivation Weil has suffered from lack of his proven

aforementioned medical therapies, supplements and nutrients he took daily, which BOP does not permit.

The BOP also refused to allow Weil to bring his small, portable water filter, about the size of a soda can, or to order a new one for him, which he offered to pay for. (App. 6) Weil without fail always poured all liquids-water, soup, juice, soda, milk, tea, etc., through it in order to purify and magnetically charge the water before he drank it, the small portable unit taken to restaurants or wherever Weil went. Now he has to drink the high mineral content Florida tap water, unfiltered, which is one of the causes of the return of his painful, unnecessary kidney stones.

Weil always wore orthopedic shoes, brought a pair to prison with him specially made and matched to BOP issue shoes. BOP refused to allow him to bring them in with him even though Weil self-surrendered, threw them out and told him they would provide him with a new pair in two weeks. Twenty two months later Weil was given a pair of regular "soft shoes" without the BOP standard issue steel toes, into which he was provided a pair of inadequate and ineffective orthotics or arches. In the intervening time, he developed DJD (degenerative joint disease), degenerative osteo arthritis and now has a completely collapsed right arch requiring a total artificial ankle replacement. (App.7) All unnecessary harm, pain and suffering, foreseeable and preventable, just as is Weil's cancerous skin lesion which the BOP dermatologist advised last July 3, 2002 had to be removed immediately, but to date no surgeon has returned to do it, the lesion a dangerous pigmentation change. Weil's blood pressure upon arrival at FPC was 117/68 and in the last two years increased as high as 167/139, Weil being told by BOP medical staff, he is a candidate for heart attack (he already had two priors) or stroke.

The BOP total denial of any of the vital items in Weil's pre sentence regimen is the cause of his current deteriorating medical condition, Weil offering to pay for both the therapies and the supplements personally, refused

as "not BOP approved." This constitutes deliberate medical indifference to the harms it has already caused Weil, shortening his limited life expectancy further, 8th Amend. Const., is cruel and unusual punishment. Farmer v. Brennan, 511 U.S. 825 (1994). Weil believes that AUSA King has had a hand in this denial of basic items required in order to maintain his level of health, having become incontinent in prison. Krein v. Norris, 309 F.3d 487 (8th Cir 2002).

Habeas corpus is the only remedy Weil has left to correct a fundament miscarriage of justice in his unjust continued incarceration. Dugger v. Adams, 489 U.S. 401, 411 n. 6 (1989). Weil's 83 month sentence, one month shy of seven years is a death sentence for him, a sentence he did not and does not deserve, the cruel and unusual punishment he is now suffering only adds more weight to the granting of the habeas corpus. At sentencing it was AUSA King who represented to the court, stating... " in addition that the Bureau of Prisons can, of course, handle all of these issues, including the medicines and the therapies." Sentencing Transcript Oct. 6, 2000 p. 66. This false, willful misrepresentation made by an AUSA who herself was illegally practicing law as agent for the government and upon which the court relied, was a fraudulent, fabricated, misleading statement that she knew was untrue at the time made. The resultant denial of any of the therapies Weil had taken for his preexisting serious medical condition of only one kidney and immune complex disease in that kidney, is cruel and unusual punishment and a violation of his civil rights not to have the same medical care and prescribed items he was receiving while in society. The excess pain and suffering Weil has suffered with each new kidney stone, forseeable and preventable, nowhere in any of BOP Medical System Facilities do they approve either therapy.

This punishment continues to cause the further debilitation of Weil's fragile medical condition. Weil is immune compromised with his immune suppression condition, all of his prior medical history delivered to both

court and AUSA six weeks prior to sentencing. Appendix 5, 7, is a summary from Weil's personal physician to Probation Dept PSI preparer and to the court pursuant to its specific request that same be delivered in documented form to AUSA King, which it was. Thus the above statement to the court by AUSA was made intelligently, knowingly, deliberately in full awareness that it was false on its face. The full documentation delivered dates back to 1974 airplane accident, in which Weil lost his sense of taste, smell, hearing and vision loss, includes the loss of his left kidney and other ailments he was left with. Out of the list of over thirty daily items prescribed by his doctor and arrived at over a trial and error period of many years, which stabilized his condition, only two of the items are supplied to Weil as "approved" by BOP, the remaining items all refused, as is his water filter. Result is kidney stones again reoccurring at an alarming rate, painful and traumatic to his one remaining kidney, to which BOP only provides aspirin or ibuprofen, no pain killers to alleviate the cruel and unusual punishment caused solely by the deprivation of all those items prescribed and listed in App. 5, 7.

SUMMARY

In order that this Court's jurisdiction may be focused upon the crucial violations of the Constitution and laws of the United States, Weil relies primarily on uncontroverted facts and evidence in the district court and appellate court, which are a matter of record, most of which are deemed admitted or conceded. On habeas corpus, when a case reaches this Court, the application of federal constitutional doctrines shall be made on the undisputed portions of the record referring to the undisputed facts. Thomas v. Arizona 356 U.S. 390 (1956). Through affirmance of judgment on appeal and denial of post conviction remedies, Weil's detention remains illegal pursuant to clear, unambiguous law, being denied due process and Equal Protection clauses among other uncontested claims.

There is no conflicting or disputed claims as to any of the actors in violations of §458 or to the undeniable ineffective assistance of Weil's personally retained but incompetent counsel both trial and appellate, which AUSA "bypassed" in retaliation for counsel breaching what she considered to be her personal legal protocol. The main contradiction is 11th Circuit unprecedented holding that the abuse Weil was subjected to ". . . is not one in which fundamental fairness necessitates the assistance of a trained advocate." Petition For Writ of Certiorari p. 19 and App. 3-8. Weil disputes it, contending every criminal case requires some measure of fundamental fairness as due process mandates, otherwise we will all be deprived of 5th Amend. Const. rights, "No one shall be deprived ... without due process of law." Weil has been so deprived, due to the undue influence of a father-judge, daughter-AUSA, practicing together in the same courthouse at the same time and extending to appeals court where Judge King also sits by designation.

28 U.S.C. §458, 460(b) remains untested, just as many laws previously presented to appeals court were similarly untried, but court has power and obligation to try issues of fact anew– which is a recurring problem. Townsend v. Sain, 372 U.S. 293 (1963). Here 11th Circuit abdicated its responsibility rather than find against Judge King's daughter AUSA King, its Opinion an unreasonable application of federal law in order to arrive at a conclusion that would protect both Kings by avoiding and sidestepping the issue entirely, to Weil's peril, ongoing detention. It is a manifest injustice for Weil, seriously undermines role of appeals court and a real risk of loss of public confidence in the judicial process and court impartiality. Substantial and continuing court abuses going on in Miami Federal District Courthouse have been occurring for too long and requires this court's supervisory review power to finally put an end to it. Granting writ for habeas corpus here, will send a clear message.

CONCLUSION

Judges, AUSA's and courts themselves should be held to a higher standard, not a lesser one. In this case they were not held to any standard at all, reaping the fruits of the poisonous trees, depriving Weil of impartial treatment and decisions, the personal ingredients and bent minds seeking to protect their own ever present. It was highly prejudicial at trial and thereafter, the errors committed seriously affected the verdict and post conviction motions and most important the appeal itself. Justice was not dispensed evenhandedly, cause and prejudice both prevelant, ineffective counsel undeniable, violations of 6th Amend. obvious as is clear violations of all Judicial Anti Nepotism Acts, statutes, laws and Constitution. Habeas corpus cries out for issuance, all courts below unhearing, turning away completely, rather than face the truth, gross manifest injustice. For all reasons presented and for those Weil a non-lawyer was unable to find, it is respectfully requested that the relief sought be granted. Court jurisdiction was divested, habeas corpus should issue.

Respectfully submitted,

March 28, 2003

Steve Weil, PRO-SE

Steve Weil, pro-se

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 27, 2003

Mr. Stephen G. Weil
#11615-004
P.O. Box 779800
Miami, FL 33177- 0200

Re: Stephen G. Weil v. United States
No. 02-992

Dear Mr. Weil:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
/s/William K. Suter, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10123-AA

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

STEPHEN G. WEIL,
Defendant-Appellant.

On Appeal from the United States District Court
For the Southern District of Florida

Entered September 26, 2002

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19____, ____ F.2d ____).

Before: ANDERSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10123
Non-Argument Calendar

D.C. Docket No. 98-00866-CR-PAS

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

STEPHEN G. WEIL,
Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Florida

Filed: July 31, 2002
Entered: July 31, 2002

Before ANDERSON, DUBINA, and HULL, Circuit Judges.

PER CURIAM:

Steven Weil, a federal prisoner proceeding *pro se*, appeals the district court's denial of his post-judgment motion to compel the government to file a substantial assistance motion pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. After review, we affirm.

I. BACKGROUND

On May 12, 2000, Weil was found guilty by a jury of conspiring to launder property represented by a law enforcement officer as drug trafficking proceeds, in violation of 18 U.S.C. § 1956(h) and conducting and attempting to conduct financial transactions designed to conceal and disguise property represented by a law enforcement officer

to be drug trafficking proceeds, in violation of 18 U.S.C. § 1956(a)(3)(B). On October 6, 2000, the district court sentenced Weil to a term of 83 months in prison, to be followed by three years of supervised release. Weil appealed his conviction and sentence, both of which were affirmed by a panel of this Court on November 15, 2001.

On October 5, 2001, Weil filed in the district court a *pro se* motion to compel the government to file a Rule 34(b) motion, or in the alternative to reduce his sentence for substantial assistance. Weil argued, among other things, that the government's refusal to file a Rule 35(b) motion was in bad faith and violated his due process rights. According to Weil, the government's motive for refusing to file the Rule 35(b) motion was its desire to punish him because he was a former FBI informant who had "transgressed the limits of the law" and this motive was unconstitutional. Weil also argued that the government's decision not to file a Rule 35(b) motion was not rationally related to legitimate government objective.

The government opposed Weil's motion, arguing that it had reviewed Weil's offer of assistance and in good faith declined to enter into a cooperation agreement with him, that Weil had not rendered substantial assistance, and that Weil had failed to demonstrate an unconstitutional basis for the government's decision.[1] In response, Weil requested an evidentiary hearing. Weil also filed a motion to strike the

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1 A review of the district court's docket sheet indicates that the district court ordered the government to supplement its one-page response to Weil's motion to compel by November 9, 2001, and the government complied. However, neither the district court's order nor the government's supplemental response are included in the record on appeal. On appeal, the government contends, and Weil does not dispute, that the government argued in its supplemental response that "Weil's allegations were not of sufficient import and credibility; were not based on first-hand information; were subject to allegations of coaching and tailored testimony due to Weil's collaboration and "hours and hours" of discussion with fellow inmates Hammer, Giraldo and Ruiz; and were at odds with sound law enforcement evidence gathering techniques."

government's response to his motion to compel based on non-responsiveness and for summary judgment.

The district court denied Weil's motion to compel on November 11, 2001, finding that its review of the government's decision not to file a Rule 35(b) motion is limited to whether the decision is based on a constitutionally impermissible motive, and that Weil had failed to provide any evidence of an unconstitutional motive. Subsequently, the district court denied Weil's motion for reconsideration and motion to strike and for summary judgment. This appeal followed.

II. DISCUSSION

A. Rule 35(b)

On appeal, Weil argues that the district court erred in denying his motion to compel because he adequately demonstrated that the government's refusal to file a Rule 35(b) motion was motivated by vindictiveness and personal bias on the part of the prosecutor and thus violated his due process rights. We review *de novo* whether the district court could compel the government to make a substantial assistance motion. *United States v. Forney*, 9 F.3d 1492, 1498 (11th Cir. 1993) (context of U.S.S.G. § 5K1.1).[2] After review, we concluded that the district court properly denied Weil's motion to compel the government to file a Rule 35(b) motion.

Rule 35 of the Federal Rules of Criminal Procedure provides for the correction or reduction of a sentence under certain circumstances. Subsection (b) of Rule 35 permits a district court to "reduce a sentence to reflect a defendant's

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[2] Given the similarity of language and purpose of U.S.S.G. § 5K1.1 and Rule 35(b), in analyzing Weil's argument regarding a substantial assistance motion under Rule 35(b) we rely in part, as did the parties in their briefs, upon cases involving substantial assistance motions under U.S.S.G. § 5K1.1.

subsequent substantial assistance in investigating or prosecuting another person," but only "[i]f the Government so moves within one year after the sentence is imposed." Fed. R. Crim. P. 35(b). In other words, the district court can reduce a defendant's sentence as a result of substantial assistance only upon motion by the government. *United States v. Howard*, 902 F.2d 894, 896-97 (11th Cir. 1990).

Absent an agreement to the contrary, the decision to file a Rule 35(b) motion lies within the sound discretion of the government. *United States v. Alvarez*, 115 F.3d 839, 841 (11th Cir. 1997). Where, as here, the government has decided not to file a Rule 35(b) motion, review by the district court is available, but very limited. Specifically, as the Supreme Court held in *Wade v. United States*, 501 U.S. 181 (1992), "federal district courts have authority to review a prosecutor's refusal to file a substantial-assistance motion and to grant a remedy if they find that the refusal was based on an unconstitutional motive." *Wade*, 504, 185-86.[3] Examples of unconstitutional motive cited in *Wade* include a refusal to file a motion because of a defendant's race or religion. *Id.* at 186. A defendant who claims "merely [to have] provided substantial assistance" or who makes "additional generalized allegations of improper motive" is not entitled to discover, an evidentiary hearing, or relief. *Id.* Furthermore, a defendant seeking review of a refusal to file a substantial assistance motion "has no right to discovery or an evidentiary hearing unless he makes a 'substantial threshold showing.'" *Id.*

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[3] In *Wade*, the Supreme Court also noted that the defendant would have been entitled to relief "if the prosecutor's refusal to move was not rationally related to any legitimate Government end, " but determined that the record did not support such a claim, *Id.* at 186. We note that the government articulated a rational reason for refusing to file a Rule 35(b) motion in Weil's case, namely its concerns about Weil's credibility, his susceptibility to accusations of coaching, and his lack of personal knowledge about the information he was relaying, all of which are legitimate governmental concerns.

Here, at most the record indicates that the government made an oral agreement with Weil to consider the information he provided and determine whether it warranted a Rule 35(b) motion for substantial assistance.[4] The government reviewed Weil's information and determined that it did not constitute substantial assistance and refused to file a Rule 35(b) motion. Therefore, the district court's review, and hence our review, is limited to whether the government's refusal was motivated by some constitutionally "suspect reasons such as his race or his religion." *See Wade*, 504 U.S. at 186.

Weil, however, has made no allegations, much less presented any evidence, indicating that the government's motivation was based on some suspect classification such as his race or religion. Rather, Weil contends that the government's refusal to file a Rule 35(b) motion is based on the personal animosity and vindictiveness of the particular

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[4] The government contends, and the district court found, that there was no agreement between the government and Weil and that Weil's efforts to cooperate were unsolicited. However, AUSA Sabin's July 6, 2001 letter to Weil suggests that his office had agreed "as a good faith gesture, to review written materials provided by [Weil] relating to the nature and scope of your proffered potential assistance." In any event, this is a distinction without a difference, since nothing in the record suggests that the government unconditionally agreed to file a Rule 35(b) motion, but rather that the government retained the discretion to determine whether the information provided by Weil constituted substantial assistance and whether to file a Rule 35(b) motion. This fact is reflected in Weil's own correspondence with AUSA Sabin dated June 25, 2001, in which he asks for "confirmation of [Sabin's] willingness to review of [sic] all our assistance at the appropriate time, to give us and our families near term hope that we will be granted relief" and expresses "hope that [Sabin] will support a Rule 35(b) motion for each of us."

prosecutor assigned to his case.[5] This is not an "unconstitutional motive" as that phrase is used in *Wade*.[6] *Wade* clearly excludes from this phrase allegations that the defendant provided substantial assistance accompanied by "generalized allegations of improper motive." *Id.* at 186.[7] The government's refusal to file a substantial assistance motion is not reviewable for bad faith. *See Forney*, 9 F.3d 1492, 1502 n.5. This sort of inquiry would "intrude into the zone of prosecutorial discretion." *See id.* at 1502 n.4.

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5 At various times, in his filings with this Court or with the district court, Weil has claimed that the prosecutor's animosity toward him was due to the fact that he was a one-time confidential FBI source who had broken the law, due to his high socio-economic status, or due to the fact that Weil went over the prosecutor's head to appeal directly to the U.S. Attorney in Florida in offering his substantial assistance or to provide information to U.S. Marshals.

6 In concluding in *Wade* that court review is restricted to unconstitutional motives, the Supreme Court stated that it saw "no reason why courts should treat a prosecutor's refusal to file a substantial assistance motion differently from a prosecutor's other decisions." *Wade*, 504 U.S. 185. The Supreme Court cited as an example *Wayte v. United States*, 470 U.S. 598 (1985). *Id.* at 185. In *Wayte*, the Supreme Court reviewed a prosecutor's decision whom to prosecute to determine whether the decision was based on "unjustified standards such [sic] race, religion, or other arbitrary classification, including the exercise of protected statutory or constitutional rights." *Wayte v. United States*, 470 U.S. 598, 608 (1985) (citations omitted). Although Weil asserts that the refusal to file a Rule 35(b) motion in his case is a result of prosecutorial vindictiveness, he does not allege that the prosecutor's vindictive purpose was to retaliate against him as a result of the exercise of some statutory or constitutional right.

7 Weil devotes a significant portion of his appellate brief to describing the numerous instances wherein he provided substantial assistance to the government. However, under *Wade*, a defendant's allegation that he provided substantial assistance is insufficient to entitle the defendant to relief, with or without additional allegations of improper motive. *Wade*, 504 U.S. at 186. In other words, even assuming *arguendo*, that Weil's assistance to the government was substantial, absent some showing of an unconstitutional motive on the part of the government, the district court properly denied Weil's motion.

In sum, we conclude that Weil failed to make the "substantial threshold showing" of an unconstitutional motive for the government's refusal to file a Rule 35(b) motion. Accordingly, the district court did not err in denying Weil's motion to compel the government to file such a motion, in denying Weil an evidentiary hearing, or in denying Weil's summary judgment motion.

B. Weil's New Arguments

Weil argues that the government "constructively" denied him assistance of counsel and that his counsel was ineffective during Rule 35(b) negotiations with the government, in violation of his Fourth, Fifth, Sixth, and Fourteenth Amendment rights. Among his many arguments, Weil contends that the government intentionally by-passed his counsel and negotiated directly with him to obtain his assistance "in the shortest time possible, with the least effort and the least obligation." He also argues that his counsel was ineffective because he never informed Weil of the need to have in place a cooperation agreement before Weil provided assistance to the government, did not try to secure such an agreement prior to Weil turning over his information, and did not take steps to ensure that government in fact filed a Rule 35(b) motion on Weil's behalf after Weil turned over his information.

After review, we conclude that Weil has not shown any reversible error in the [sic] regard.[8] First it does not appear Weil raised these claims in the district court. Second, to the extent Weil did raise them, his claims lack merit in any event. Weil did not have a plea agreement with the government, but was convicted after a jury trial. In addition, although we have not addressed the issue, the Fifth Circuit has held that a criminal defendant does not have a constitutional right to assistance of counsel in a Rule 35(b)

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[8] This Court reviews questions of constitutional law *de novo*. *Loyd v. Alabama Dept' of Corrections*, 176 F.3d 1336, 1339 (11th Cir. 1999)

proceeding. *See United States v. Palomo*, 80nF.3d [sic] 138, 142 (5th Cir. 1996) (holding that a criminal defendant in Rule 35(b) proceedings has no right to counsel under either the Sixth Amendment or the due process clause of the Fifth Amendment). Where a defendant/petitioner has no Sixth Amendment right to counsel, he cannot be deprived of the effective assistance of counsel. *Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982); *Golsten v. Attorney General of Alabama*, 947 F.2d 908, 911 (11th Cir. 1991).

We conclude that, because a Rule 35(b) motion is not a stage of the criminal proceedings where a defendant's substantial rights may be affected, no Sixth Amendment right to counsel attached during Weil's Rule 35(b) proceeding. Likewise, we conclude that, because a Rule 35(b) proceeding is not one in which fundamental fairness necessitates the assistance of a trained advocate, Weil had no Fifth Amendment due process right to counsel. *See Palomo*, 80 F.3d at 141-142. As such, Weil did not have a constitutional right to the effective assistance of counsel or to the assistance of counsel during his efforts to provide substantial assistance to the government.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

18 U.S.C. §1956(h)
18 U.S.C. § 1956(a)(3)(B)
18 U.S.C. § 2

UNITED STATES OF AMERICA,)
)
v.)
SERGIO PAOLO MASOCCO,)
STEPHEN G. WEIL,)
VALE GARBER,)
and)
ELYAHU MATALON,)
a/k/a "Eli")
_____)

INDICTMENT

The Grand Jury Charges that:

COUNT 1

From in or about March, 1997, to on or about November 13, 1998, at Miami, Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants

SERGIO PAOLO MASOCCO,
STEPHEN G. WEIL,
YALE GARBER,
and
ELYAHU MATALON,
a/k/a "Eli"

did knowingly and intentionally combine, conspire, confederate and agree with each other and with persons unknown to the Grand Jury to knowingly conduct and attempt to conduct financial transactions affecting interstate

and foreign commerce, with transactions affecting interstate and foreign commerce, which transactions involved property represented by a law enforcement officer to be the proceeds of a specified unlawful activity, that is, the receiving, concealment, buying, selling and otherwise dealing in controlled substances punishable under the laws of the United States, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(3)(B).

All in violation of Title 18, United States Code, Section 1956(h).

COUNTS 2-3

On or about the dates set forth below, at Miami, Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

SERGIO PAULO MASOCCO,
STEPHEN G. WEIL,
and
YALE GARBER,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the transfer of United States currency, in the amounts set forth below, which transaction involved property represented by a law enforcement officer to be the proceeds of a specified unlawful activity, that is, the receiving, concealment, buying, selling and otherwise dealing in controlled substances, punishable under the laws of the United States, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of said specified unlawful activity:

COUNT	DATE	APPROXIMATE AMOUNT OF FUNDS IN U.S. DOLLARS
2	7/8/97	$50,000.00
3	9/24/97	$115,00.00

All in violation of Title 18, United States Code Sections 1956(a)(3)(B) and 2.

COUNTS 4-6

On or about the dates set forth below, at Miami, Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

YALE GARBER
and
ELYAHU MATALON
a/k/a "Eli"

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the transfer of United States currency, in the amounts set forth below, which transaction involved property represented by a law enforcement officer to be the proceeds of a specified unlawful activity, that is, the receiving, concealment, buying, selling and otherwise dealing in controlled substances, punishable under the laws of the United States, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of the said specified unlawful activity:

COUNT	DATE	APPROXIMATE AMOUNT OF FUNDS IN U.S. DOLLARS
4	3/23/98	$50,000.00
5	3/30/98	$100,000.00
6	7/9/98	$110,000.00

All in violation of Title 18, United States Code, Sections 1956(a)(3)(B) and 2.

FORFEITURE

1. As a result of the foregoing offenses alleged in Counts One through Six, herein alleged and incorporated by reference for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982, the defendants,

SERGIO PA[O]LO MASOCCO,
STEPHEN G. WEIL,
YALE GARBER,
and
ELYAHU MATALON,
a/k/a "Eli"

shall, upon conviction of each such offense, forfeit to the United States all property, real and personal, involved in such offense and all property traceable to such property, for which the defendants are jointly and severally liable, which property includes, but is not limited to, $425,000 in United States currency and all interest and proceeds traceable thereto in that such sum is aggregate is property which was involved itn eh aforementioned offenses or is traceable to such property.

2. In the event that any property described above as being subject to forfeiture, as a result of any act or omission by the defendant:

(a) cannot be located upon the exercise of due diligence;
(b) has been transferred or sold to or deposited with a third person;
(c) has been placed beyond the jurisdiction of the Court;
(d) has been substantially diminished in value; or
(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 18 United States Code, Section 982(b)(1), to seek forfeiture of any other property of said defendant up to the value of the above described property.

All in violation of Title 18, United States Code, Section 982(a)(1).

[UNSIGNED AND UNDATED]
Foreperson

/s/ [ILLEGIBLE SIGNATURE]
THOMAS E. SCOTT
UNITED STATES ATTORNEY

/s/ [ILLEGIBLE SIGNATURE] for
MARY V. KING
ASSISTANT UNITED STATES ATTORNEY

Dr. Martin Dayton DO.
Dayton Medical Center
18600 Collins Ave.
Sunny Isles Beach, FL 33160
Tel. 305-931-84984 -fax 305-936-1849
E-mail mddomddo@pol.net
September 21, 2000

Honorable Patricia Seitz
U.S. Federal Courthouse
301 N. Miami Ave.
Miami, Fl. 33128

Re: Case of Steven Well, additional information

Dear Judge Seitz:

Pursuant to fulfilling your verbal order to submit records for Mr. Stephen Well on August 24, 2000, please accept with my apologies for presenting late a 1994 file which was somehow not included with those submitted on that date. The file deals with a report from the Bascom Palmer Eye Institute concerning eye dysfunction. Mr. Weil continues to use the topical medication, Muro 5%, to relieve discomfort and bilberry tablets to help maintain sight which had been prescribed at that time. Neither of these prescribed substances are said to be available through the BOP. Also not available from the BOP is Oscillococcinum, a non-toxic European anti-viral remedy, used episodically by Mr. Well.

For completeness, Mr. Weil includes a liquid treatment in his health maintenance regime. Mr. Well has a history of immune complex disease, a condition involving antibody/antigen complexes lodging in tissues such as the kidneys (Description is described in the highlighted booklet enclosed with the August 24, 2000 filings.). Mr. Weil has been treating his condition for several years by magnetically activating the fluids he consumes daily. He researched and imported the technology from Europe. It involves pouring liquids through an approximately 3 1/2" by 13" magnetized

tubular device (Indumag Vital Inductor Magneto). Mr. Well uses two such devices, one stationary for home use and the other portable for use away from home. Considering renal immune complex disease may be progressively down spiraling unless abated and Mr. Well was initially told he had 15-20 years to live after his airplane accident, continuing this strategy is appropriate. Magnetics in various forms are proven to be useful in medicine. I doubt such a devise used by Mr. Weil is permitted in prison.

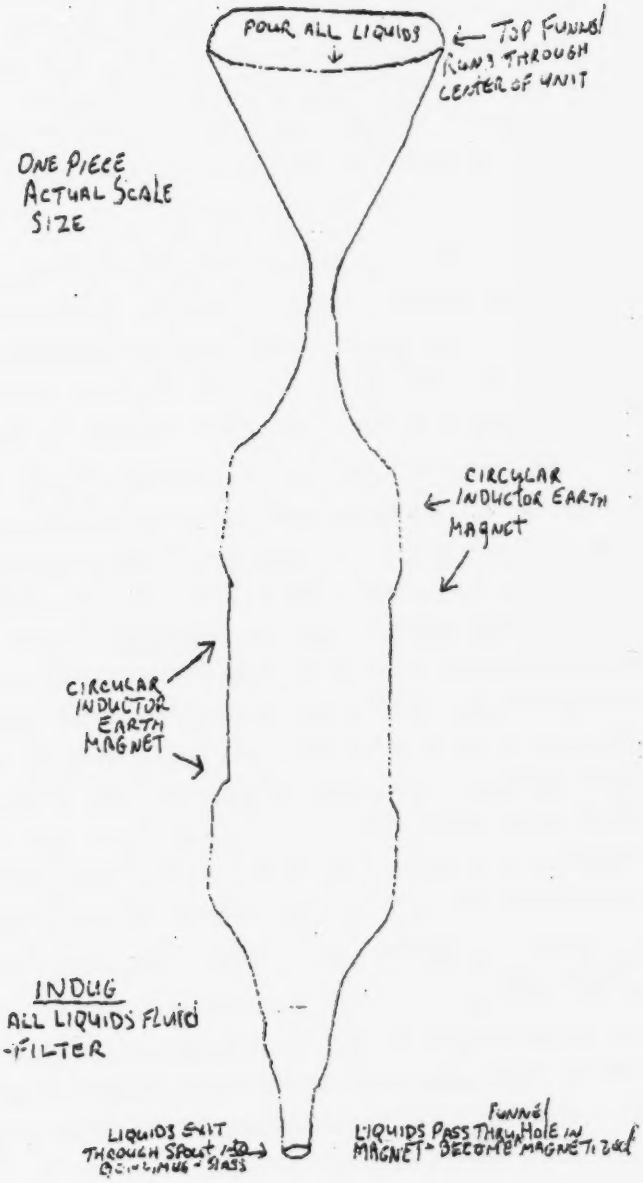
In addition to treating liquids he consumes, he also uses air ozonation devices to reduce particulate matter he breaths such as dust, mold, pollen and cigarette smoke which aggravates his immune system sensitivities and reduces chances of infection from air born pathogens.

Magnetic devices, air ozonation, nutritional supplements, ultra-violet blood irradiation, chelation therapy (Description is available in a text I have authored on the subject enclosed with this filing), and life style modifications have been associated with a trend of normalization of Mr. Weil's kidney function as reflected in his blood tests! To what precise degree each factor or combination of factors has played a role in maintaining kidney function is difficult to evaluate. Considering the clinical improvement beyond expectation and the difficulty in separating out the significance of each factor or combination of factors plays, continued maintenance with the same regime is medically appropriate and recommended.

Adherence to the aforementioned regime used by Mr. Weil is virtually impossible incarcerated under present prison policies. Prolonged interruption of this regime may significantly further compromise his health.

Sincerely,

\s\ Dr. Martin Dayton
Dr. Martin Dayton, D.O.



BEST AVAILABLE COPY

ORTHOPEDIC MEDICAL REPORT
ON *STEVE* WEIL AT FPC AUG. 23, 2002

Steve Weil, 67 yr. old inmate at Federal Prison Camp. 15801 S.W. 137 Ave., Miami, Fla. always wore orthopedic shoes, as a result of a weak right ankle from an airplane accident in 1974. Patient wore the shoes when he reported to FPC, but were confiscated by R&D as impermissible. He was told not to worry, BOP will make him a new pair within 2 weeks. Nine months later he was finally provided a pair of non-effective "orthotics" as a substitute for orthopedic shoes, but BOP standard shoes would not accommodate them. BOP Podiatrist ordered a pair of soft shoes, but it took BOP another 13 months to get them, into which "orthotics" would fit. Podiatrist had to re-write several orders for them. During this entire time, he had to wear steel-tip shoes, which would not accommodate orthotics, which did serve to further aggravate his condition, causing other worsening, but foreseeable conditions to occur. BOP gave him a cane to assist in walking and standing, his back now out of alignment, dislocation of back discs, causing him considerable pain and having to lean noticeably to the right in a distinct limp.

Patient has developed DJD, severe degeneration joint disease of now distorted bilateral ankles, which has caused degenerative osteo arthritis of entire lower right extremities; is unable to ambulate in a normal gait pattern due to his condition; is compensating on his gait as other parts of his body have been adversely effected; his back, hips, both knees and particularly left ankle/foot is very painful due to altered gait pattern. Both ankles very edematous, left greater than right, range of motion is sensum severely restricted and painful just to the touch, left greater than right movement is limited dorsiflexion and inversion. Muscle strength has diminished to 4/5 in both feet, ankles compartments plus Tinels sign at bilateral halluces due to nerve damage from his having to wear steel

tipped shoes for 1.9 years, which dig into halluces on ablulation and caused a nueropraxia at first netatarsal nerve bilateral. (Shoes issued 8/9/02).

Both Great Toe nails on halluces are dysplastic and dystrophic, due to the damage steel tip shoes caused on ambulation. He has dermatologic adverse changes and venous statis surrounding ankles bilaterally, with edema in both ankles and feet. Onset of Sciatica is evident, exacerbates in humid, damp or wet weather, the DJD aggravated substantially, ligaments and joints inflamed, spasms and constant back pain due to damaged muscle and tissue - a direct result of deprivation of proper orthopedic shoes. He now has a severe deformity and permanent disability.

He has contracted a resistant strain of fungus on both great toes, treated first with Mycelex, trhen Nizoral, last Clotrimazole, all ineffective. The toes will debilitate further without oral Lamisil or preferably oral Sporonox. He requires immediate triple arthodesis surgical intervention, bone density scan for oseteo perosis, a MRI, physical therapy and professional weekly treatment to alleviate pain/anti-inflamatories. He now has a completely collapsed right arch. It took a total of almost 22 months before he received just "plain soft shoes" for orthotics. He requires permanent correction via artificial ankle replacement.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-23671-CIV-SEITZ/SORRENTINO
(98-0866-CR-SEITZ)

STEVE WEIL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

NOTICE OF REASSIGNMENT

COMES NOW the United States of America, by and through the undersigned Assistant United States Attorney, and gives notice that the above captioned case has been reassigned to Assistant United States Attorney Jena King.

Respectfully submitted,
MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

By: /s/JENA KING
Assistant U.S. Attorney
Bar No. 0793991
Address: 99 NE 4th St.
Miami, Florida 33132
Telephone Number (305) 961-9418
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jena.king@usdoj.gov

January 29, 2003